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September 8, 2006

Gaylee Adell
Consumer Protection and Safety Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: **Comments of Small and Mid-sized LECs on Discussion Paper
Addressing Cramming Reporting Requirements
Our File Nos. 1468/8600 – 7020/7027-W-43.28 & 4111/7027**

Dear Ms. Adell:

As discussed during the August 21, 2006 workshop, and in accordance with the instructions in your August 30, 2006 notice to the interested parties, the Small and Mid-sized LECs¹ offer these comments on the Consumer Protection and Safety Division ("CPSD")'s August 11, 2006 Discussion Paper proposed reporting requirements in compliance with Public Utilities Code Section 2889.9 ("Discussion Paper").

This effort to craft a new set of "cramming reporting requirements" stems from the mandate in Ordering Paragraph 7 of the consumer protection decision (D.06-03-013) that staff " . . . hold a workshop to determine appropriate reporting requirements pursuant to P.U. Code §

¹ The Small LECs and Mid-Sized LECs are the following carriers: Calaveras Telephone Company (U 1004 C), Cal-Ore Telephone Co. (U 1006 C), Citizens Telecommunications Company Of California (U 1024 C) d/b/a Frontier Communications of California, Ducor Telephone Company (U 1007 C), Foresthill Telephone Co. (U 1009 C), Global Valley Networks, Inc. (U 1008 C), Happy Valley Telephone Company (U 1010 C), Hornitos Telephone Company (U 1011 C), Kerman Telephone Co. (U 1012 C), Pinnacles Telephone Co. (U 1013 C), The Ponderosa Telephone Co. (U 1014 C), Sierra Telephone Company, Inc. (U 1016 C), SureWest Telephone (U 1015 C), The Siskiyou Telephone Company (U 1017), Volcano Telephone Company (U 1019 C), and Winterhaven Telephone Company (U 1021 C).

2889.9." Based on that directive, the CPSD held an initial workshop with interested parties on July 17, 2006. To clarify some fundamental questions and issues that arose during that workshop, the CPSD then issued the Discussion Paper. During the subsequent workshop, held on August 21, 2006, parties provided focused remarks on the Discussion Paper.

The Small and Mid-sized LECs have been active participants in this effort, and offered substantive comments during both workshops. Since the Small and Mid-sized LECs have very few cramming complaints, and since they do not engage in significant third-party billing, the Small and Mid-sized LECs have emphasized the need for the reporting requirements to include a reasonable "opt out" mechanism. The Small and Mid-sized LECs have also stressed the importance of adopting a targeted, straightforward definition of "cramming" to remove the ambiguity and subjectivity from the reporting process, and to provide the Commission with a focused set of data that will help CPSD identify serious cramming problems (as opposed to the entire pool of billing-related inquiries and complaints).

These comments incorporate and supplement the previous comments of the Small and Mid-sized LECs on these issues. The Small and Mid-sized LECs offer the following observations and proposed revisions on the Draft Report:

- (1) The reporting requirements should be subject to a monthly "opt out" and an annual exemption mechanism that would permit service providers with few or no cramming complaints to report on an exception basis.
- (2) The reporting requirements should be limited to complaints associated with "[t]he billing and collection services that the billing telephone company provides to third parties, including affiliates of the billing telephone company," in accordance with the statutory language of Section 2889.9. *See* Pub. Util. Code § 2889.9(d).
- (3) The definition of a "cramming complaint" for the purposes of the reporting requirements should be *an affirmative and unequivocal allegation by the customer that he or she did not order or authorize the purchase of a product or service for which a charge appeared on the customer's bill, where the dispute remains unresolved for more than 30 days*. This definition should not include: (A) billing inquiries; (B) complaints resolved within 30 days; (C) disputes regarding the appropriate amount of an otherwise authorized service; or (D) allegations that the customer was misled about the quality, price, or terms and conditions associated with a product or service.
- (4) The proposed requirement that reports should include "the total number of subscribers billed by each entity for which cramming complaints were received" is unwieldy and unnecessary, and should be eliminated.

**The Proposed Cramming Reporting Regime Should Include a Monthly
"Opt Out" Mechanism, and an Annual Exemption Procedure by
Which Exception Reporting Would Be Permitted**

The Discussion Paper proposes two "opt out" mechanisms by which carriers would not be required to submit the contemplated cramming reports. *See Discussion Paper*, at p. 17. The Small and Mid-sized LECs support both of these proposals, with certain modifications. As discussed during the workshops, the Small and Mid-sized LECs generally do not receive significant numbers of reportable cramming complaints. Indeed, under virtually any of the definitions of "cramming" under consideration in the Discussion Paper, most of the Small and Mid-sized LECs would report zero cramming complaints each and every month. Requiring these service providers to submit reports reflecting the fact that they did not have any complaints would be unnecessary and unreasonable. Such a requirement would impose administrative burdens on these service providers without conferring any benefit on CPSD.

To avoid the need for service providers to submit – and for Commission staff to review – unnecessary paperwork, an efficient monthly "opt out" mechanism is essential. Consistent with the staff proposal, if a service provider has zero complaints in a given reporting period, that provider should be permitted to submit a verified letter stating that there were no reportable complaints. This letter should be submitted in lieu of the service provider's regular filing, on the same date that such a filing would be due. (*e.g.*, every month, if reports are due monthly).

More importantly, if a service provider can demonstrate in a verified letter that it is not likely to have any reportable complaints for the upcoming year, it should be permitted to report on an exception basis for that year. Service providers should seek annual exemptions in letters submitted on January 30th of the year for which the exemption is sought. The fact that a service provider had zero reportable complaints during the previous year should be sufficient justification for an annual exemption. If an annual exemption is granted, a service provider should not be required to submit anything to the Commission unless a reportable cramming complaint is received within the relevant reporting interval.

To reflect these changes to the annual "opt out" mechanism, the Discussion Paper's proposal should be modified as follows:

<p>2. On annual basis, a service provider may also opt-out of the monthly reporting requirements by submitting a letter to the Director of CPSD setting forth specific reasons as to why it should be exempted from the monthly reporting requirements for the entire subject year. <u>A statement that the service provider had zero reportable complaints during the previous year is a sufficient basis for an exemption.</u> The letter should be signed and verified in accordance with Rule 2.4 of the Commission's Rules of Practice and Procedure. The letter shall be submitted by January 30th for the year in which the service provider is seeking the exemption from the reporting requirements. <u>If an exemption is granted, the service provider would not be required to</u></p>

submit a monthly "opt out" letter, or any monthly documentation of cramming complaints, unless the service provider receives a reportable complaint.

To Remain Consistent with the Intent of Public Utilities Code Section 2889.9(d), the Cramming Reporting Requirements Should Apply Only to Complaints About Charges Initiated by Third Parties or Affiliates of the Reporting Entity

The reporting regime outlined in the Discussion Paper should be narrowed to more closely track the language of Public Utilities Code Section 2889.9(d). As the Discussion Paper recognizes, the express purpose of this effort to revamp the Commission's cramming reporting requirements is to implement Section 2889.9. The consumer protection decision states that "[w]ithin 180 days of the issuance of this decision, staff shall hold a workshop to determine appropriate reporting requirements pursuant to P.U. Code § 2889.9." D.06-03-013, *mimeo*, at p. 154. In implementing that code section, the decision further states that "[s]taff shall propose cramming-related reporting requirements that direct carriers to provide, among other items, the number and percentage of cramming complaints that take more than thirty days to resolve." *Id.* Neither of these statements suggest that the Commission intended to expand the reporting requirements beyond the scope of Section 2889.9.

By requiring service providers to report on cramming complaints received regarding their own services, the proposal in the Discussion Paper would exceed the Commission's intended scope. Public Utilities Code Section 2889.9(d) provides as follows:

(d) The commission shall establish rules that require each billing telephone company, billing agent, and company that provides products or services that are charged on subscribers' telephone bills, to provide the commission with reports of complaints made by subscribers regarding the billing for products or services that are charged on their telephone bills *as a result of the billing and collection services that the billing telephone company provides to third parties, including affiliates of the billing telephone company.* (emphasis added).

As reflected in the text highlighted above, the reporting requirements under Section 2889.9 apply only to "the billing of products . . . that are charged . . . as a result of the billing and collection services that the billing telephone company provides to third parties, including affiliates of the billing telephone company." Pub. Util. Code § 2889.9(d). The statute does not contemplate that cramming complaints about services provided directly by the billing telephone company would be subject to the reporting requirements.

The definition of cramming proposed in the Discussion Paper should be narrowed to be more consistent with Section 2889.9(d). As currently configured, the staff definition of reportable cramming complaints would include complaints about "charges that appear on [a] consumer's telephone bill placed on it by the *carrier* and/or a third party such as a billing agent."

Discussion Paper, at p. 7. This definition is overbroad. Regardless of what the Federal Communications Commission's ("FCC") definition of "cramming" might be, the Commission is implementing a specific code section with a specific scope, and these reporting requirements should be governed by parameters of that section.

The Definition of "Cramming" in the Discussion Paper Should be Narrowed to Ensure that the Reporting Requirements Will Not Be Over-Inclusive or Burdensome, and to Ensure that the CPSD Will Receive Useful Data

The Commission should adopt an appropriately narrow definition of "cramming" that will provide useful information to the CPSD without imposing unnecessary burdens on carriers and without generating ambiguity regarding the range of complaints to be reported. Rather than searching for a pre-existing definition of cramming from other agencies or external sources, the Commission should start by establishing some basic principles to distinguish between a reportable cramming complaint, and another type of complaint or inquiry that need not be reported. The definition should be designed to yield the particular type of information that the Commission is seeking to identify serious cramming problems, without being overbroad. There is no need for the Commission to apply a similar definition of "cramming" to that employed by the FCC or any other agency. As noted above, the Commission should be implementing a specific code section, which is designed to provide the Commission with specific information so that it can protect consumers against a specific set of illegal practices.

The Commission should observe the following principles in crafting its definition of "cramming:"

First, as the Discussion Paper wisely concludes, "billing inquiries" should not be reportable; only customer-carrier interactions that qualify as "complaints" should appear in these reports. See *Discussion Paper*, at p. 12. Distinguishing between a complaint and an inquiry can be subjective and subtle in certain instances, but there is a difference between the two that is significant for the Commission's tracking of cramming data. A "complaint" refers to a customer's affirmative, unequivocal expression that a charge on the customer's bill is unauthorized. By contrast, an "inquiry" is a more generalized "examination into facts and principles" or a "request for information" about charges on a bill, or about the terms and conditions of service. Most customer contacts with their service providers begin as inquiries. Naturally, many inquiries will be satisfied without ever turning into complaints. A small number of these initial inquiries will transform into complaints when a customer finds the information exchange to be unsatisfactory, and the customer makes an affirmative, unequivocal declaration that a charge is unauthorized.

Inquiries do not implicate the Commission's enforcement role, so they should not be included in cramming complaint reports. Where service providers are working with customers to answer their questions and provide them with information, the customer service process is functioning as it should, and there is no need for Commission interference. Even where

complaints come to light, there may be no cause for Commission involvement. However, the purpose of these cramming complaint reports should be to identify egregious circumstances for which the Commission's enforcement efforts would be appropriate. If information were provided about mere inquiries, this information would dilute the data pool to such an extent that the inquiries would distract from the more relevant data about more serious complaints.

Second, service providers should only be required to report cramming complaints that have been outstanding for more than 30 days.² Like "inquiries," complaints that are resolved within a reasonable timeframe do not convey useful information to the Commission about areas where potential enforcement or oversight might be appropriate. In many instances, customer complaints are resolved to customers' satisfaction. Again, in these circumstances, the customer service process is operating in an efficient and healthy manner. Some cramming complaints are inevitable, but if carriers respond to these complaints expeditiously and the customer is satisfied, there is no reason to bring the matter to the Commission's attention. It would be unreasonable for carriers to report all cramming complaints, and doing so would not help the Commission target instances where a real cramming problem exists.

Third, a complaint should not be considered a "cramming complaint" if the dispute involves an allegation that the *amount* of an otherwise authorized charge is incorrect. In other words, where a customer acknowledges that he or she had authorized a particular charge, but alleges that the amount of the charge is different than the customer had expected, this should not be considered a complaint about "cramming." Notably, each of the definitions of cramming from other state public utilities commissions would appear to exclude disputes regarding the appropriate amount of a charge. *Discussion Paper*, at p. 7. If these types of disputes were considered "crams," the concept of cramming would be unduly expanded to the point that the Commission would be receiving data about a wide range of billing disputes rather than receiving focused information about the specific practice of placing a charge on a customer's bill without his or her authorization. While these other types of complaints may reveal other consumer problems, those problems are not the focus of this reporting effort. A more targeted definition of cramming will produce a more useful data set to guide the Commission's enforcement efforts in this area. The staff-proposed definition is over-inclusive, and it should be narrowed.

Fourth, for similar reasons, "cramming" should not encompass allegations that a customer was misled about the quality, price, or terms and conditions associated with a product or service. The staff-proposed definition should remove this concept from its scope. A great many billing disputes will involve some allegation that the customer was misled, so including these types of complaints would expand the data set called for under the staff proposal to an unmanageable level. The inclusion of these common billing disputes in cramming complaint

² This discussion responds to one of Commissioner Chong's direct questions during the August 21, 2006 workshop on which the Commission requested comment.

reports would impose unreasonable reporting burdens on carriers, and would result in an overly broad set of reported complaints.

To provide useful data for the Commission without unreasonably expanding the reporting obligation to encompass all billing inquiries and all billing complaints, the Small and Mid-sized LECs urge the Commission to adopt the following definition of a reportable "cramming complaint:"

Cramming complaint = An affirmative and unequivocal allegation by the customer that he or she did not order or authorize the purchase of a product or service for which a charge appeared on the customer's bill, where the dispute remains unresolved for more than 30 days.

As noted above, the reporting requirements to be adopted as part of this effort should apply only to alleged cramming by third parties and affiliates.

**Carriers Should Not be Required to Report the Total Number of
Subscribers Billed by Each Entity for Which
Cramming Complaints Were Received**

In most respects, the information proposed for inclusion in cramming reports is uncontroversial. However, there was extensive discussion amongst the interested parties regarding the third proposed requirement in the staff-proposed monthly cramming complaints report. *See Discussion Paper*, at p. 15. As several carriers pointed out, information may not be readily available in carriers' billing systems regarding every entity against which a cramming allegation is made. If the allegation is against an affiliate of the reporting service provider, this information will be available. However, carriers have no business reason to maintain figures regarding the subscribership of third-party entities who may generate charges on carriers' bills. This proposed reporting requirement should be eliminated.

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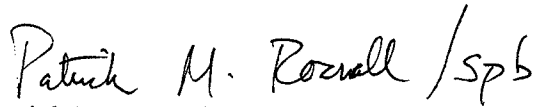
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Gaylee Adell
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The Small and Mid-sized LECs appreciate the opportunity to comment on this Discussion Paper, and urge the Commission to adopt proposed revisions to the Discussion Paper outlined above. Should you have any questions regarding the foregoing, please contact the undersigned at (415) 765-0369, or by email at prosvall@cwclaw.com.

Very truly yours,

COOPER, WHITE & COOPER LLP

A handwritten signature in black ink that reads "Patrick M. Rosvall /spb". The signature is written in a cursive, flowing style.

Patrick M. Rosvall
Attorneys for the Small and Mid-sized LECs

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Richard Clark, Director, Consumer Protection and Safety Division
August 11, 2006 Workshop Participants (per 8/30/06 e-mail from Gaylee Adell)
Parties of Record in R.00-02-004 (Service List R.00-02-004)